

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. <u>96-45</u>
Universal Service)	
)	
Forward-Looking Mechanism for High Cost)	CC Docket No. 97-160
Support for Non-Rural LEC's)	

**COMMENTS OF AMERITECH ON
PETITIONS FOR RECONSIDERATION**

Ameritech¹ submits these comments on the Petitions for Reconsideration filed by Bell Atlantic, BellSouth, GTE, and SBC with respect to the Commission's Cost Model Order.² All petitioners correctly point out that the model was not made available for public comment prior to its adoption by the Commission and that it cannot yet be evaluated for reasonableness.

As Bell Atlantic notes,³ Congress requires federal agencies to provide notice of a proposed rule and reasonable opportunity for comments before adoption of the rule.⁴ Courts have found notices defective if they lack sufficient detail so as to effectively deny interested persons the ability to make comments which would assist the agency in formulating its

¹ Ameritech means Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin.

² *In Matters of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, FCC 98-279 (rel. October 28, 1998) ("Cost Model Order").

³ Bell Atlantic Petition at 2-3.

⁴ 5 USC Section 553(c).

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regulations.⁵ Courts have also found that, if the final rule deviates sharply from the proposal, parties will be effectively deprived of notice and opportunity to respond.⁶ In this case, the model finally adopted by the Commission appears to have deviated substantially from the three models under active consideration by the Commission.⁷ While, in its meetings with the industry, the Commission discussed high level principles associated with the model and demonstrated the model as it existed then, the “final” version was not available, nor were parties given a chance to “run” it prior to its adoption. Because the totality of the Commission’s model has never been previously disclosed, interested parties had no opportunity to evaluate it to provide meaningful comments before the Commission’s decision to adopt the model.

In addition, the model still has not been made available in meaningful form for parties to evaluate whether it complies with the Fifth Report and Order -- i.e., parties cannot tell whether the model does what the Commission claims it does. Because of this, and because of deadlines for filing petitions for reconsideration, parties must now file petitions for reconsideration to preserve their right to challenge the model. Since the adoption of the Cost Model Order, the Bureau has issued at least three revised releases of the model. The revisions were not those types of changes which the Commission delegated the Bureau to deal with the need to accommodate advances in technology used to provision telecommunication services.⁸ Rather, the revisions appear to have corrected defects in the model itself. To that extent, it appears that there has not

⁵ See, e.g., *American Iron Steel Institute v. EPA*, 568 F.2d 284 (3d Cir. 1997).

⁶ See, e.g., *Kollett v. Harris*, 619 F.2d 134 (1st Cir. 1980).

⁷ Fifth Report and Order at ¶¶3-4.

⁸ *Id.* at ¶13.

yet been a final model truly adopted by the Commission.

In addition, the model violates one of the Commission's own criteria for a forward-looking cost model. In the Universal Service Order, the Commission stated that:

The cost study or model and all data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment. All data should be verifiable, engineering assumption reasonable, and outputs plausible.⁹

In this case, not only has a final model been unavailable because of the continuous corrections made by the Bureau, but, even before the model was modified, parties were unable to evaluate it due to the lack of geocode data. Although the Commission indicates that PNR data is available for review,¹⁰ that data is effectively unavailable because PNR considers its data as proprietary and will permit review only at its location in Pennsylvania at considerable cost. As BellSouth notes, because of this, there is no practical means to evaluate the data and suggest improvements as contemplated by the Commission in the Cost Model Order.

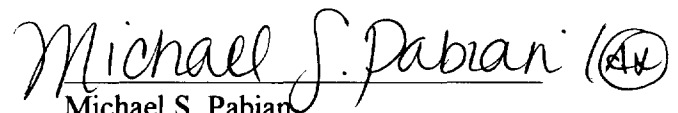
⁹ *In Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) ("Universal Service Order") at ¶250.

¹⁰ See Cost Model Order at ¶34 where the Commission states, "PRN's data is now available for review, and interested parties may comment upon and suggest improvements to the accuracy of that database."

In light of the foregoing, the Commission should reconsider its decision to adopt its cost model and should, at a minimum, defer that decision until such time as the model has been finalized and until it and supporting data are made available for interested parties to verify and comment on.

Moreover, because so many issues concerning the cost model remain open, the Commission should not hesitate to continue to use the current high cost support mechanism for non-rural carriers beyond the revised July 1 deadline as necessary to permit an adequate resolution of those issues.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael S. Pabian". To the right of the signature is a circled mark that appears to be a stylized "AV" or similar initials.

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CERTIFICATE OF SERVICE

I, Grace Germain, do hereby certify that a copy of the foregoing Comments of Ameritech on Petitions for Reconsideration has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 15th day of January, 1999.

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